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**IN THE  
COURT OF APPEALS OF INDIANA**

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IN THE MATTER OF THE INVOLUNTARY )  
TERMINATION OF THE PARENT-CHILD )  
RELATIONSHIP OF Z.E.J., MINOR CHILD, AND )  
HER MOTHER, STEFANIE COZAD,<sup>1</sup> AND )  
HER FATHER, JOHN JOHNSON, )

JOHN JOHNSON, )

Appellant-Respondent, )

vs. )

MARION COUNTY DEPARTMENT OF )  
CHILD SERVICES, )

Appellee-Petitioner, )

and )

CHILD ADVOCATES, INC., )

Co-Appellee/Guardian ad Litem. )

No. 49A04-0612-JV-751

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<sup>1</sup> Stefanie Cozad is not seeking relief on appeal. Pursuant to Ind. Appellate Rule 17(A), however, a party of record in the trial court is a party on appeal.

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Victoria Ransberger, Judge Pro Tempore  
Cause No. 49D09-0602-JT-8185

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**October 15, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**KIRSCH, Judge**

John Johnson appeals the involuntary termination of the parent-child relationship with his minor daughter, Z.E.J., upon the petition of the Marion County Department of Child Services (“DCS”). He raises the following restated issue: whether the DCS presented clear and convincing evidence to support the termination of Johnson’s parental rights as to Z.E.J.

We affirm.

**FACTS AND PROCEDURAL HISTORY**

Johnson and Stephanie Cozad (“Cozad”) are the natural parents of Z.E.J., who was born on June 9, 2003. On August 11, 2005, the DCS filed a petition alleging that Z.E.J. was a child in need of services (“CHINS”), for the reason that Cozad was arrested while in Z.E.J.’s presence, and Johnson, whose paternity of Z.E.J. had not yet been established, could not immediately be located. That same day, the court held an initial hearing and determined that Z.E.J. was a CHINS and placed her in foster care. Z.E.J. remained in foster care for approximately two months; thereafter, she was moved to the home of Johnson’s parents, where she has resided continuously. In addition, the trial court issued a participation decree, requiring that paternity be established and ordering Cozad and Johnson to participate in

various services, such as parenting assessment, drug and alcohol assessment, and home-based counseling.

Cozad did not participate in services as ordered and continued with drug usage, eventually being discharged from treatment for failure to complete it. Initially, Johnson was not participating either, and his visitations were suspended. On February 28, 2006, DCS filed a petition for involuntary termination of the parent-child relationship between Z.E.J. and her parents.

In or around March 2006, Johnson's visitations resumed, first at The Children's Bureau, where play and interaction were appropriate and the two seemed "happy and relaxed together," and later at Johnson's parents' home. *Ex. A* at 29. Eventually, Johnson completed all the ordered services except home-based counseling and the random drug screens that generally accompany that service.<sup>2</sup>

On October 24, 2006, the matter came for trial. Johnson appeared in person and by counsel; Cozad appeared by counsel, but not in person. At the conclusion of evidence that day, the court terminated Cozad's parental rights as to Z.E.J. The trial resumed on November 9, 2006 for additional evidence on the matter of termination of Johnson's parental rights.

At that hearing, Johnson testified to his full-time butcher job at Safeway, where he had worked continuously for the previous two years. Johnson explained that he usually works a second job as a meat cutter during hunting season in order to make more money. In general, Johnson exercised regular and frequent visitation with Z.E.J. at his parents' home, four to

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<sup>2</sup> Random drug screens generally occur during the period of home-based counseling, in which Johnson had not participated. *Tr.* at 73.

five times per week.

Johnson also testified to his sporadic and sometimes volatile relationship with Cozad. He stated that, as part of his intention to terminate his relationship with her, he moved to a new residence in July 2006. He conceded that her name appeared on the apartment's lease, although she never signed it. Johnson completed a recommended anger management course in May 2006, but thereafter was arrested twice on domestic battery charges involving Cozad; those charges were later dismissed. At the trial, Johnson testified that Cozad was no longer residing with him; however, his mother had reported to the guardian ad litem approximately one week prior to trial that, to her knowledge, Cozad was living with Johnson.

Although Johnson established paternity and completed the classes as ordered by the court, he did not notify the DCS caseworker, Lisa Forte, of his new address and he failed to keep in regular contact with her. At the October 2006 hearing, Forte testified that the last time she had spoken to Johnson was at the prior hearing in the cause, which had occurred the previous month. At that time, Johnson told Forte that he was living with Cozad and planned to marry her. Because Forte believed that Johnson continued to reside with Cozad, who was actively abusing drugs, home-based counseling never occurred.<sup>3</sup> At trial, Forte recommended that the trial court terminate Johnson's parental-rights to Z.E.J., and the guardian ad litem supported that recommendation, although she conceded that she had never met or spoken with Johnson or Cozad.

Mary Ann Johnson, Johnson's mother and guardian of Z.E.J., testified that Johnson

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<sup>3</sup> Forte explained that home-based counseling is not available for active drug addicts. *Tr.* at 90.

did not pay child support for Z.E.J., but noted that he pays \$500.00 every month toward daycare expenses for Z.E.J., and he also purchased clothes and other needed items for her care. While she hoped for reunification between her son and Z.E.J., Mrs. Johnson testified that, if it were the court's decision to terminate her son's rights to Z.E.J., she and her husband would "absolutely" adopt her. *Tr.* at 131.

The trial court took the matter under advisement, and the parties submitted proposed findings of fact and conclusions. On November 28, 2006, the trial court issued findings of fact and conclusions thereon and terminated Johnson's parent-child relationship with Z.E.J. He now appeals.

### **DISCUSSION AND DECISION**

The purpose of terminating parental rights is to protect children, not to punish parents. *In re D.L.*, 814 N.E.2d 1022, 1027 (Ind. Ct. App. 2004), *trans. denied*. Parental rights are of a constitutional dimension, but the law provides for the termination of those rights when the parents are unable or unwilling to meet their parental responsibilities. *In re R.S.*, 774 N.E.2d 927, 930 (Ind. Ct. App. 2002), *trans. denied* (2003).

IC 31-35-2-4(b)(2) sets out the following relevant elements that the DCS must allege and prove by clear and convincing evidence in order to terminate the parent-child relationship:

(A) the child has been removed from the parent for at least six months under a dispositional decree;

. . . .

(B) there is a reasonable probability that:

(i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied;  
or

(ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;

(C) termination is in the best interests of the child; and

(D) there is a satisfactory plan for the care and treatment of the child.

IC 31-35-2-4(b)(2)(B) is written in the disjunctive. Thus, it requires the trial court to find only one of the two requirements of subparagraph (B) by clear and convincing evidence.

Here, the trial court supported its termination with specific findings and conclusions. In such a case, we apply a two-tiered standard of review: first we determine whether the evidence supports the findings; second, we decide whether the findings support the judgment. *In re W.B.*, 772 N.E.2d 522, 529 (Ind. Ct. App. 2002). We will not set aside specific findings unless they are clearly erroneous. *Id.* A finding of fact is clearly erroneous when the record lacks any evidence or reasonable inferences to support it. *Id.* In determining whether the evidence is sufficient to support the judgment terminating parental rights, this court neither reweighs the evidence nor judges the credibility of witnesses. *In re D.L.*, 814 N.E.2d at 1027.

Termination of the parent-child relationship is proper where the child's emotional and physical development is threatened. *In re R.S.*, 774 N.E.2d at 930. However, a trial court need not wait until a child is irreversibly influenced by a deficient lifestyle such that her physical, mental, and social growth is permanently impaired before terminating the parent-child relationship. *In re D.L.*, 814 N.E.2d at 1027. A court may properly consider evidence

of a parent's drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment. *In re A.L.H.*, 774 N.E.2d 896, 899 (Ind. Ct. App. 2002). Several of these factors were addressed at Johnson's termination hearing, and we review them here.

While there was some evidence that Johnson had abused drugs in the past, he completed the intensive outpatient treatment as recommended by the DCS. He also completed an anger management class as recommended. As of the date of the termination hearing, he had maintained a steady, full-time job at Safeway for two years. He also had an apartment, although there was no evidence of its condition. No evidence was presented that Johnson had in the past ever neglected Z.E.J.

Despite having completed some of the recommended services, Johnson failed to complete others. He did not stay in regular contact with the DCS worker as he was ordered to do. He did not complete the home-based counseling, or the random drug screens that would accompany it. Perhaps most significantly, Johnson appeared to continue to permit Cozad's presence in his home, despite being told by the DCS that reunification with Z.E.J. was not possible under those circumstances. Although Johnson maintained at the hearing that he no longer was involved in a relationship with Cozad, the trial court did not find his testimony credible. Determining that Johnson "chose to continue to live with [Cozad] and continues to choose the dysfunctional relationship over a relationship with his daughter," the trial court ultimately found that (1) the conditions that resulted in Z.E.J.'s removal and the reasons for her continued placement outside of her father's care will not be remedied, and (2)

the continuation of the parent-child relationship poses a threat to her well-being. *Appellant's App.* at 11-12.

Recognizing our deferential standard of review, we find that the evidence supports the trial court's findings, and the findings support its conclusions that termination is in Z.E.J.'s best interests and that the plan for her adoption by her grandparents is satisfactory. We will only reverse a termination of parental rights on appeal upon a showing of clear error, which leaves us with a definite and firm conviction that a mistake has been made. *McBride v. Monroe County Office of Family & Children*, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003). Clear error has not been established here.

Affirmed.

ROBB, J., and BARNES, J., concur.